IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.839/1997

Union of India V/s Hari Narayan Gupta and another

Date of Order : 15th November, 2006

HON'BLE MR.R.S. CHAUHAN, J.

Mr.S.C. Purohit, for the appellant.
Mr.Deepak Goyal, for the respondents.

By Court:

The appellant, Union of India, has challenged the order dated 30.5.1997 passed by the Railway Claims Tribunal, Jaipur Bench, Jaipur (henceforth to be referred to as 'the Tribunal', for short) whereby the learned Tribunal has granted a compensation of Rs.2,00,000/- along with an interest of 12% per annum to the claimants.

Briefly, the facts of the case are that on 21.12.1994 one Devendra Kumar Gupta was travelling by Agra Shuttle, from Kota to Sawai Madhopur, with a valid second class ticket. One of his friends, Mr. Anil Kumar Gupta, came to the Railway Station with Devendra Kumar Gupta, bought a ticket for him for Sawai Madhopur and handed over the same to him. Despite the heavy rush in the train Devendra

Kumar Gupta boarded the train. But, he never reached the destination. Since he never reached home, his parents, the claimants, made inquiries about his whereabout. They were informed that someone had fallen from the running train and had died near Sumerganj Mandi. To their shock, the person was none other than their son. Therefore, they filed a claim petition before the learned Tribunal. The appellant submitted their written statement and denied the averments made in the claim petition. According to the appellant, burden of proof lies on the claimants to establish the fact that their son was a bona fide passenger. However, the claimants had not discharged this burden. Moreover, according to them, the case is not covered under the definition of “untoward incident” as given under Section 123(c) of the Railways Act, 1989 (henceforth to be referred to as 'the Act', for short).

In order to prove their case, the claimants filed an affidavit of claimant No.1 and of Mr. Anil Kumar Gupta. They also filed a number of documents. The appellant neither examined any witness, nor filed any document. After going through the oral and documentary evidence, the learned Tribunal decided the claim petition in favour of the claimants as aforementioned. Hence, this appeal before this Court.

Mr. S.C. Purohit, the learned counsel for the appellant, has vehemently argued that the burden of proof lies on the claimant to establish that the deceased was a bona fide passenger. But, they have failed to do so. Therefore, the learned Tribunal has erred in holding that the burden of proof lies on the Railways Administration to establish that he was not a bona fide passenger. Secondly, that the case does not fall within the definition of “untoward incident” as defined under Section 123(c) of the Act. In order to support his first contention, the learned counsel has relied on a large number of cases decided by the various Hon'ble High Courts namely Geetha V/s Union of india (2005(1) TAC 207), Union of India V/s S. Yadagiri @ Yadaiah and another (2005(1) TAC 490), Sanjay Sampat Rao Gaikwad V/s Union of India with Anant Soma Menge V/s Union of India (2006(1) TAC 247), Ashok Punjab Roachincholkar V/s Madhukar Nagorao Sambare (2005(2) TAC 247), Union of India V/s Lakhimunni and others (2005(2) TAC 121, South Central Railway, Secunderabad V/s K. Narayana Rao (2005(2) TAC 410), Muhammed Kunhju V/s Union of India (2005(2) TAC 698) and Union of India V/s Smt. Meera Kumari and others (2005(2) TAC 873).

On the other hand, Mr. Deepak Goyal, the learned counsel for the respondent-claimants, has relied upon the case of Raj Kumari

V/s Union of India (1993 ACJ 846), a case decided by the Madhya Pradesh High Court to argue that the burden of proof lies not on the claimant, but on the Railway Administration to prove that the passenger was not a bona fide passenger. According to the learned counsel, the Railways has failed to discharge this burden. Therefore, the learned Tribunal has validly granted the compensation in favour of the claimants. Hence, he has supported the impugned order.

We have heard both the learned counsels for the parties, have perused the impugned order, and have examined the case laws submitted at the Bar.

The legal issue, which has arisen before this Court is on whom does the burden of proof lie to prove that the deceased was or was not a bona fide passenger-does it lie on the claimants, or on the Railway Administration? In order to answer these issues, it is imperative that a holistic reading of the Act is undertaking. Section 2 (29) of the Act defines the word “passenger” as meaning “a person travelling with a valid pass or ticket”. Section 54 of the Act imposes a duty on a passenger to present his pass or ticket to such railway servant for examination during the journey or at the end of the journey or surrender such ticket at the end of the journey, or if such

ticket is issued for a specific period, on the expiry of such period. Furthermore, Section 55 of the Act prohibits every person from entering or remaining in any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. In case a person is found to be ticketless, Section 137 of the Act empowers the courts to imprison such person for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. The proviso thereto restricts the power of the court in imposing the fine. The fine cannot be less than Rs.500/-. Thus, a minimum punishment has been prescribed by the said provision. Section 138 of the Act permits the railways to levy excess charge and fare on those passengers, who travel without ticket. Section 139 of the Act empowers the railways to remove the person in case, the person is found to be travelling ticketless. A bare perusal of all these provisions clearly reveals that a criminal liability is created against a ticketless passenger.

Moreover, the explanation appended to Section 124-A further defines the word “passenger” as including “a railway servant on duty and a person who has purchased a ticket for travelling by a train carrying passenger, on any date or a valid platform ticket and becomes victim of an untoward incident”. The expression “untoward

incident" has been defined by Section 123(c), as under:-

> (1) (i) the commission of a terrorist act within the meaning of sub-section(1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
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> (ii) the making of a violent attack or the commission of robbery or dacoity; or
>
> (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
>
> (2) the accidental falling of any passenger from a train carrying passengers.

Section 124A of the Act imposes a liability on the Railways in case of "untoward incident" as under:-

> 124A. **Compensation on account of untoward incident** – When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a

passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

(a) suicide or attempted suicide by him;

(b) Self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;
(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation – For the purpose of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

Thus, in case a person meets with an untoward incident, the railway is liable to compensate the claimant whether or not there has been wrongful act, neglect or default on the part of the Railway Administration.

The first and foremost cardinal principle of Common Law is

that “every man is innocent, till proven guilty”. The burden of proving a person guilty lies on the State or on instrumentality of the State. Since the Railway Administration is an instrumentality of the State, obviously the burden of proving that the passenger was travelling ticketless and, hence, was not a bona fide passenger lies on the Railway Administration.

Of course, Section 101 of the Evidence Act places the burden of proof on the person, who desires any court to give judgment as to any legal right or liability dependent on the existence of the facts, which he asserts. But, in the case of the railway accident where a passenger has died, the claimants would find it extreme difficulty, if not impossible, to prove certain facts, which are beyond their reach and control. Since the claimants may not know whether the deceased had purchased a valid ticket or not, they would not be in a position to prove the fact that the deceased was a bonafide passenger. However, since the railway appoints ticket collector on its behalf to check the valid ticket of the passengers, the railway has a mechanism for finding out and discovering whether the deceased was a bona fide passenger or not. Since the passenger is presumed to be innocent, a legal presumption can be drawn that he had followed the law and that he had, indeed, purchased a valid ticket prior to boarding the train.

Considering the fact that there is an equal presumption in favour of the railway that the railway officers would have discharged his duty of checking the ticket, in a bona fide manner, it can be presumed that the ticket collector would have examined whether the deceased possesses a valid ticket or not. Therefore, the railway has a means through which they can easily prove that the deceased was not a bona fide passenger. Hence, the burden of proof lies on the Railway Administration to lead evidence and to prove that the deceased was not a bona fide passenger.

There is yet another aspect of the matter, prior to travelling, a passenger neither records, nor leaves any information with the family members about the valid ticket bought by him. During the course of travelling and specially after he meets with an accident, the body of the deceased is transported and is transferred on various occasions. During the period of alleged accident and the discovery of the body, many things may transpire and the ticket may be lost but unknown to others. Therefore, in case, the ticket is lost, it would be almost impossible for the claimants, who are the member of the bereaved family, to establish that the deceased was travelling with a valid ticket. Considering the fact that Section 124 and Section 124A of the Act are social beneficial piece of legislation, by placing the burden

of proof on the claimants the benefit of these two beneficiary provisions would be denied to the claimants. An interpretation of the law, which dilutes the very purpose of a provision should be shunned. Therefore, examined from any angle, it is clear that the burden of proving the fact that the deceased was a bona fide passenger or not lies on the Railway Administration and not on the claimants.

In the case of Raj Kumari (supra), their Lordships of the Madhya Pradesh High Court were seized of the same issue as in this case. Although the said case arose under the Railway Act, 1890 but Sections 68, 130, 122 of the Act of 1890 are pari materia with the provisions of the Railway Act, 1989. In that case, their Lordships categorically held that the burden of proof lies on the Railway Administration to establish that the passenger was not a bona fide passenger. Moreover, the Division Bench of this Court, in the case of ***Smt. Bhagwani Giri V/s Union of India*** (***2004(4) WLC 573***), relying upon the judgment in Raj Kumari (supra) case and has categorically held that it is for the railways to establish that a passenger was not a bona fide passenger. Considering the fact that a Division Bench of this Court has answered the issue before us, any contrary view taken by another High Court automatically becomes irrelevant. After all, under judicial discipline, the Single Bench is bound

by the decision of the Division Bench of this Court. Therefore, this Court has no hesitation in holding that the burden of proof to establish that the deceased was not a bona fide passenger lies on the Railway Administration.

In the present case at hand, Anil Kumar Gupta had submitted his affidavit wherein he had clearly stated that he had accompanied Devendra Kumar Gupta, the deceased, to the railway station and had bought a ticket for him and had given the ticket to him prior to his boarding the train. Therefore, there is no reason to doubt the veracity of his testimony. The learned Tribunal had also noted in its impugned order that the railway has not produced any evidence to prove that the deceased was a ticketless traveler. Hence, the Railway Administration has not discharged the burden which was upon it. Therefore, the learned Tribunal has validly directed the Railway to pay the compensation.

The learned counsel for the appellant has also contended that the case does not fall under the definition of “untoward incident” as defined in Section 123(c) of the Act. But Section 123(c) of the Act clearly defines the expression as “an accidental falling of any passenger from a train carrying passengers”. In the present case, the

claimant No.1, Hari Narayan Gupta, the father of the deceased, had clearly stated that one Manoj Jain had informed him that someone had fallen from the train and it could be his missing son. When inquiries were made, it was discovered that a body had been found near Sumergan Mandi (Indergarh) in a badly crushed and cut condition. The said body was identified by Hari Narayan and by other relatives to be that of Devendra Kumar Gupta. Certain receipts and papers were also discovered from the body to indicate that the body was of Devendra Kumar Gutpa. The Railway Administration has not led any evidence to prove that the deceased had died because of suicide or attempt to commit suicide, or as a result of self-inflicted injuries, or by his own criminal act, or that the death was caused by any natural means or medical or surgical treatment. Thus, the appellant cannot be given the benefit of five exceptions mentioned in Section 124A of the Act. Therefore, the learned Tribunal has rightly concluded that the case falls under the definition of “untoward incident” as contained in Section 123(c)(2) of the act.

In the result, there is no merit in this case. It is, hereby, dismissed. There shall be no order as to costs.

(R.S. CHAUHAN), J.

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